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DE RUEHMD #2093/01 3121929

ZNY CCCCC ZZH
P 081929Z NOV 07
FM AMEMBASSY MADRID

TO RUEHC/SECSTATE WASHDC PRIORITY 3774
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE
RUEHLA/AMCONSUL BARCELONA 3169
RUEAWJA/DEPT OF JUSTICE WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 MADRID 002093

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DEPARTMENT FOR L, CA/OCS/CI AND EUR/WE

E.O. 12958: DECL: 11/07/2017

TAGS: KOCI PREL CASC SP

SUBJECT: SPANISH AGAIN BRING UP CARRASCOSA CASE AND MAY RAISE WITH LEGAL ADVISOR

REF: A. MADRID 2041
1B. MADRID 597

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Classified By: DCM HUGO LLORENS FOR REASONS 1.4 (B) AND (C)

11. (C) The DCM met November 5 with Secretary of State for Justice Julio Perez Hernandez to thank him for Spain's efforts in the Al-Kassar extradition case (REFTEL A). Perez Hernandez raised during the meeting Spain's continuing concern over the long-running case of Maria Jose Carrascosa, a Spanish attorney from Valencia held in a New Jersey prison since November 2006 for contempt of court after failing to produce her daughter before a New Jersey court. Perez Hernandez said he was considering asking Spanish Ambassador to the U.S. Carlos Westendorp to raise the matter in Washington with the Department's Legal Advisor. The DCM explained to Perez Hernandez that the Department was not in a position to persuade the judge to withdraw his contempt citation. Separately, Spanish press reported on November 6 that Carrascosa's sister has asked President Zapatero to intervene on her sister's behalf and would be meeting with officials at Spain's Ministry of Justice on November 8 to discuss the case.

//BACKGROUND//

12. (C) Maria Jose Carrascosa removed her daughter, Victoria Innes, from New Jersey and the United States in violation of New Jersey law and an existing parenting agreement that stated Victoria was not to leave the U.S. A Spanish court in Valencia denied the father's request, under the Hague International Child Abduction Convention, to return the child to the U.S. That decision was upheld on appeal. Carrascosa then returned to New Jersey to continue litigating the divorce. She was ordered to produce Victoria, fled, was arrested in New York, and jailed for contempt of court until she complies with the court's ruling and produces her daughter. Her "habeas corpus" petition was denied in Federal Court in February. In an unusual move, the judge agreed to rehear the petition and allowed her lawyers to file "amicus" briefs. On May 14, the petition was again denied. In the decision, the judge extensively quoted Spanish Hague legal expert Elisa Perez-Vera in support of the New Jersey Court's ruling that the Spanish court exceeded its authority under the Convention and therefore the New Jersey court was not bound by its decision. Carrascosa's family made many false statements to the Spanish press about her confinement conditions. Carrascosa's sister and father told Spanish media that she was not receiving proper medical care for a thyroid condition and that, "the U.S. is treating her worse than the ones held in Guantanamo." The Embassy has

consistently maintained that Carrascosa was being treated well and receiving all necessary medication.

¶3. (U) The Ministry of Justice released a statement on November 5 expressing its, "concern for the regrettable situation that a Spanish citizen has suffered for several months." However, the release said that the Spanish government was not a party to this judicial process and thus had limited room to act. The MOJ stressed that it had done and was doing everything it could for Carrascosa (calling its actions "irreproachable"), but said it would carefully analyze the most recent petitions made to it by the inmate's family. The GOS' stated goal is to find a solution that would allow Carrascosa to leave prison, find an amicable solution with her ex-husband, and allow Victoria to have access to both of her parents. The press release further conveyed the government's view that the current situation facing Carrascosa ("indefinite jail time") was disproportionate, and that young Victoria was the one who has suffered the most. The MOJ statement also correctly mentions that the Spanish government made available to Carrascosa, free of charge, one of the best mediation attorneys in Spain, but that Carrascosa had rejected any offer of mediation.

//COMMENT//

¶4. (C) The Carrascosa case has received sensational press coverage in Spain and has generated negative feelings towards the U.S. The Spanish reaction to this case has not been based on reason or judicial arguments, but is a very emotional one based on photos of "a mother in chains." The Embassy, Children's Issues, U.S. Federal and State judges, and the Spanish Ministry of Justice, have all urged mediation between the parents. We have constantly told the Spanish that this is a tragic example of the breakup of a family, but it is a matter for the courts. We have said that, just as in Spain, the Executive Branch cannot attempt to influence the

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judges' decisions. Per REFTEL B, Ambassador Aguirre told Justice Minister Bermejo in April that, as in many contentious divorce cases, there are two sides to the story, and that the Spanish press had greatly skewed this story and portrayed Carrascosa solely as the victim. He also said that Carrascosa herself had exhibited some erratic behavior, such as changing her legal team on numerous occasions and rejecting any and all offers of mediation or compromise. We do not agree with those Spanish officials who maintain that this is a Hague case and who cannot comprehend that an individual in our common law system can be jailed for contempt of court--a civil, rather than criminal matter.

¶5. (C) We believe that the GOS' renewed interest in the Carrascosa case is due in part to recent events surrounding a Spanish airline crew detained in Chad. Spanish and French citizens were detained earlier this month on charges of suspected kidnapping related to a NGO's efforts to fly 103 children to France, and the Spanish government was unable to win their release. It took action and negotiation from French President Sarkozy to free three French journalists and four Spanish flight attendants. Sarkozy and his personal plane dropped off the flight attendants in Madrid on November 4 en route to Paris, an event that was greeted by scorn and derision from virtually all sectors of the Spanish political spectrum who said this marked a failure in Zapatero's foreign policy and his inability to support Spanish citizens detained abroad. Indeed, Perez Hernandez admitted to the DCM on November 5 that President Zapatero "had not looked very good" after this event and asked what the U.S. could do to help Carrascosa. We believe the GOS will come under increasing pressure from Carrascosa's family and supporters to "do something" and to obtain results. We would expect Ambassador Westendorp to contact the Department's Legal Advisor in the near future to once again plead this case. Our response to all inquiries should be to urge mediation and compromise, which Carrascosa has rejected. In July, Peter Innes, the

father, made a settlement offer which would allow Victoria to remain in Spain, visit him in the U.S. twice a year, and allow him to visit Victoria in Spain twice a year.
Carrascosa summarily rejected this offer.

AGUIRRE